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ARIZONA ATTORNEY GENERAL

Senator Boyd Tenney
Arizona State Senator
Senate Wing
State Capitol
Phoenix, Arizona 85007

Re: 78 - 9 (R77 - 293)

Dear Senator Tenney:

We are writing in response to your request for our opinion of the constitutionality of the law that authorized the Real Estate Commissioner to require the fingerprinting of license applicants. Two statutes provide for fingerprinting. A.R.S. § 32-2123 authorizes the Real Estate Commissioner to require applicants for original salesman's and broker's licenses be fingerprinted. A.R.S. § 32-2130 authorizes the Commissioner to require fingerprinting of those seeking to renew their salesman's and broker's licenses.

A review of the applicable statutes, case law, and history of the real estate industry in Arizona indicates that the fingerprinting requirement is constitutional.

As a general matter the Legislature may, in the exercise of the State police power, enact legislation for the benefit of the public health, safety or welfare. State v. Double Seven Corp., 70 Ariz. 287, 219 P.2d 776 (1950). It is within the province of the Legislature to decide if a particular occupation, due to its nature or the way the business is carried out, is subject to regulation. Francis v. Allen, 54 Ariz. 377, 96 P.2d 277 (1939). The Arizona Legislature has long recognized that regulation of the real estate industry is necessary to protect the public from incompetent or unscrupulous real estate agents. Whitaker v. Arizona Real Estate Board, 26 Ariz. App. 347, 548 P.2d 841 (1976); Bonasera v. Roffe, 8 Ariz. App. 1, 442 P.2d 165 (1968).

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A regulatory statute is valid so long as it has a relation to the evil it was intended to remedy. Atcheson, Topeka and Santa Fe Railway Co. v. State, 33 Ariz. 440, 265 P. 602 (1928). Thus, if the fingerprinting requirement for real estate agents aids in protecting the public it is helpful. Clearly, the fingerprinting requirement would further the statutory objective of protecting the public. Currently, the Real Estate Commissioner is charged with the obligation of investigating the background of license applicants and denying licenses to those who have been convicted of felonies. A.R.S. § 32-2153. A fingerprinting requirement is a valid procedure for assisting investigations into applicants' backgrounds and is, therefore, lawful.

As you point out, not all state regulatory agencies fingerprint license applicants. However, it should also be noted that those applying for real estate licenses are not the only people subject to fingerprinting. For example, a person seeking a liquor license may be fingerprinted. A.R.S. § 4-202. Similarly, the Arizona Racing Commission may fingerprint persons seeking racing licenses. A.R.S. § 5-106. In any event, an act is not unconstitutional merely because it might be considered unjust or a hardship. Schuster v. Schuster, 33 Ariz. 279, 264 P. 100 (1928). Moreover, in light of the history of fraud in Arizona real estate transactions, a fingerprinting requirement for real estate brokers and salesmen is not unjust.

Very truly yours,



BRUCE E. BABBITT
Attorney General

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